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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/446,395	12/22/1999	ULLA OLOFSSON	000515-175	2263

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RONALD L GRUDZIECKI
BURNS DOANE SWECKER & MATHIS
PO BOX 1404
ALEXANDRIA, VA 223131404

EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/12/2004

26

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/446,395

Applicant(s)

OLOFSSON ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5 January 2004 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 6-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gryskiewiez et al. (5,901,851) in view of Langdon (5,368,910).

With respect to claims 1, 4, 8, 12-17, and 19, Gryskiewiez discloses the use of an absorbent article such as an incontinence product, diaper, and sanitary napkin (column 1, lines 18-20) with an absorbent body 52 enclosed between a liquid impermeable cover sheet 40 and a liquid permeable cover sheet 54, as shown in figure 1. The liquid permeable cover sheet 54 comprises a first material of a bicomponent fiber comprising a polyethylene sheath and a polyester core, as disclosed in column 9, lines 8-12. The

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liquid permeable cover sheet 54 may be treated with to increase its hydrophilicity, as disclosed in column 9, lines 6-8.

Gryskiewiez discloses treating the liquid permeable cover sheet to increase its hydrophilicity, but remains silent as to the type of surfactant used to treat the cover sheet. Langdon discloses treating a liquid permeable cover sheet with plasma to increase the hydrophilicity of the cover sheet, as disclosed in column 8, lines 39-42. It would have been obvious to one of ordinary skill in the art at the time of invention to treat the liquid permeable cover sheet of Gryskiewiez with plasma, as taught by Langdon, to increase hydrophilicity without leaving a surfactant residue on the surface of the fibers, as disclosed by Langdon in column 8, lines 42-43.

The liquid permeable cover sheet of Gryskiewiez, as modified by Langdon, comprises the same materials, and therefore the same chemical makeup, of the instant invention. Gryskiewiez, as modified by Langdon, while silent as to the oxygen/carbon ratio of the liquid permeable cover sheet, discloses a liquid permeable cover sheet that obviously has a ratio of greater than or equal to 0.23, since the material and treatment are equivalent to that of the instant invention.

With respect to claim 2, Gryskiewiez discloses, in column 9, lines 1-13, the first material being a nonwoven material comprising fibers having a polyethylene sheath.

With respect to claim 3, Gryskiewiez discloses the claimed invention with the exception of polypropylene as the core material of the bicomponent fibers. Langdon discloses, in column 6, lines 25-59, polypropylene being equivalent to polyester.

Therefore, because the two polyolefins are art-recognized equivalents, one of ordinary

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skill in the art would have found it obvious to substitute polypropylene for polyester in the core of a bicomponent fiber.

With respect to claims 6, 7, and 9, Gryskiewiez discloses a second material layer 44 comprising a nonwoven layer of polypropylene, as described in column 7, lines 5-12.

With respect to claim 10, see figure 3.

With respect to claim 11, see Gryskiewiez, column 11, lines 28-39.

With respect to claim 18, metallocene is used as a catalyst in the polymerization of certain polyolefins, and therefore metallocene-catalyzed refers to a process used to polymerize the polyethylene. The limitation of the polyethylene being a metallocene-catalyzed polyethylene is considered a Product-by-Process limitation and these limitations are not limited to the manipulations of steps, only the end structure implied by these steps (see MPEP 2113). It follows that if the product in the claim with the product-by-process limitation is the same as the product of the prior art, the claim is unpatentable even if the prior art product was made by a different process. The polyethylene being a metallocene-catalyzed polyethylene is therefore anticipated by Gryskiewiez and Langdon.

Claims 5 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gryskiewiez et al. (5,901,851) in view of Langdon (5,368,910) as applied to claim 1 above, and further in view of Thomas et al. (4,351,784).

Gryskiewiez fails to disclose the liquid permeable cover sheet being a perforated plastic film. Thomas teaches the use of a corona treated perforated thermoplastic film

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(see Abstract). It would have been obvious to one of ordinary skill in the art at the time of invention to construct the liquid permeable cover sheet of Gryskiewiez from a perforated thermoplastic film, as taught by Thomas, in order to provide an increased liquid flow rate through the material (see Abstract).

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gryskiewiez et al. (5,901,851) in view of Langdon (5,368,910) as applied to claim 1 above, and further in view of Roe et al. (5,643,588).

Gryskiewiez fails to disclose the second material layer 44 having a grammage of between 6 and 20 gsm. The second material layer 44 of Gryskiewiez functions as a topsheet, as disclosed in column 6, lines 64-65. Roe discloses an absorbent article having a topsheet with a grammage, or basis weight, of between 14 and 25 gsm, as described in column 7, lines 37-38. This provides a suitable thickness for a topsheet on an absorbent article. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the second material layer of Gryskiewiez with a grammage of between 14 and 25 gsm, as taught by Roe, to provide the layer with a suitable thickness.

Response to Arguments

Applicant's arguments filed 5 January 2004 have been fully considered but they are not persuasive.

With respect to the argument that different materials show significant differences in the acquired ability to retain liquid permeability upon repeated wetting, it is noted that

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Gryskiewiez discloses a liquid permeable cover sheet comprising a material with a surface of polyethylene, as described in column 9, lines 8-12. The disclosure by Gryskiewiez of embodiments comprising other materials, or other liquid permeable layers that may contact the wearer of the article, does not mean that the embodiment relied upon in the rejection above is improper. Gryskiewiez clearly and positively recites the structure of the claimed invention, and the disclosure of alternate embodiments or other features of the article are irrelevant.

Gryskiewiez discloses the motivation to treat the liquid permeable cover sheet with a surfactant to improve the liquid transfer capabilities of the sheet. Langdon teaches the use of a plasma treatment, which provides advantages over a surfactant treatment, as described in the rejection of claim 1 above. The motivation of treating the material of Gryskiewiez with the method of Langdon is clearly stated.

The rejection under 35 U.S.C. 103(a) as being unpatentable over Gryskiewiez et al. (5,901,851) in view of Langdon (5,368,910) is proper, and still stands.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents 6,242,074 and 6,022,607 pertain to corona-treated cover sheets for absorbent articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UNA

cla

March 10, 2004


JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700